
Appeal Decision

Site Visit made on 10 August 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2021

Appeal Ref: APP/P2114/W/21/3266727

The Barn, Elenors Grove, Ryde, PO33 4HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr. & Mrs. Hawker against the decision of Isle of Wight Council.
 - The application Ref 20/01089/FUL, dated 10 July 2020, was refused by notice dated 15 September 2020.
 - The development proposed is described as demolition of existing barn on site, and the construction of a new "barn style" three-bedroom detached dwelling with access and car parking, and associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal site is within 5.6 km of the Solent and Southampton Water Special Protection Area (SPA). The appellants submitted a unilateral undertaking (UU) prior to the determination of the application with an obligation to make a financial contribution towards mitigation measures for the effect of the proposed development on the integrity of the SPA. During the course of the appeal the appellants submitted an additional UU for the uplift in the tariff from 1 April 2021. I return to this matter below.

Main Issues

3. The main issues are the effect of the proposed development on:
 - i) the character and appearance of the area; and
 - ii) the integrity of the Solent and Southampton Water SPA.

Reasons

Character and appearance

4. The Barn is a contemporary detached dwelling at one end of a line of 9 large, detached dwellings in generous plots along the south side of and set back from Elenors Grove, which forms part of the A3054 between Fishbourne and Ryde. To the south-west of The Barn is another dwelling, Oakwood Lodge, set back further from the road. These properties are bounded by woodland to the east and west and fields to the south, of which there are glimpses between the dwellings from Elenors Grove.

5. Adjacent to the rear of The Barn is a modest timber-clad barn, which is proposed to be removed. An access track to a pumping station leads from Elenors Grove between The Barn and the neighbouring property to the east before turning to run adjacent to the rear boundaries of the properties to the east of The Barn. To the other side of this track is a grass field bounded by a belt of trees to the south. The rear gardens of these properties and the field slope gently southwards to the trees, beyond which the land rises.
6. To the south of the lawn to the rear of The Barn is an area of grass that extends to the tree belt to the south. This is the site of the proposed dwelling, which would be positioned in the north-western corner. There is no physical separation between the lawn and the site and the latter was largely mown at the time of my site visit. It is separated by a post and wire fence from the field to the east. To the western boundary is a close boarded fence forming the rear boundary of Oakwood Lodge and a hedge with agricultural land beyond.
7. Although the appeal site appears as a continuation of the lawn to the north it also has a clear visual and physical relationship with the field to the east, with which it also appears as a continuous sweep of land. The field clearly relates to the countryside, with the access track to the pumping station forming a clear boundary between it and the residential properties to the north. Therefore, although separated from the fields to the west and south by vegetation the site has an affinity with the wider countryside.
8. Whereas The Barn continues the linear pattern of development of the dwellings fronting Elenors Grove, the proposed dwelling would be set behind this line and therefore be at odds with that pattern, extending beyond the existing properties into an area more characteristic of the countryside. The pumping station is clearly distinguishable from the dwellings in size, appearance and setting and does not set a precedent for the proposed dwelling. Rounding off the existing development would not be consistent with the prevailing pattern of development and the siting of the proposed dwelling would thus be incongruous, notwithstanding the siting of Oakwood Lodge to the west.
9. Whilst the design of the proposed dwelling echoes an agricultural barn and it would replace an existing structure, the domestic curtilage and paraphernalia would identify it as a dwelling. It would be both larger and further away from The Barn than the existing outbuilding, which is clearly ancillary to the main dwelling. The dwelling would be visible from the existing properties along Elenors Grove but other than from The Barn, only at an oblique angle. As it would be relatively low and sited in a dip in the landscape, views of the property would be largely contained. It would not be visible from the road. The proposals would therefore have a limited impact on the appearance of the area.
10. The appellants and Council disagree on whether the appeal site falls within the definition of previously developed land in the Glossary to the National Planning Policy Framework (the Framework). Both the original barn and The Barn are permanent structures and the site is not within a built-up area. The indication before me is that both now and prior to the construction of The Barn the appeal site and the site of The Barn formed a single parcel of land.
11. Although the appeal site is physically separated from the buildings the physical layout of the site is contiguous with the undisputed curtilage of The Barn and is thus intimately associated with it. The appeal site and buildings are within one enclosure and ownership and the site serves the buildings in a useful way,

being able to be enjoyed with the lawn immediately adjacent to The Barn as one. Curtilage, whether residential or not, is not itself a use of land. I therefore consider, as a matter of fact and degree, that the appeal site forms part of the curtilage of these permanent structures. I am therefore satisfied that the appeal site is previously developed land.

12. For the reasons given above I conclude that the proposals would result in limited harm to the character and appearance of the area. Accordingly, in this respect, the proposals would not comply with Policies DM2 and DM12 of the Island Plan Isle of Wight Core Strategy (2012) (the Island Plan). These policies set out, amongst other things, that proposals will be expected to complement the character of the surrounding area and that proposals that conserve or enhance the landscape of the Island will be supported. Consequently the proposal would not conform fully either with Policy SP2, which sets out that development will be permitted in accordance with the policies of the plan.
13. However, I find no conflict in this respect with Policy SP1 of the Island Plan, as its requirement for development to clearly demonstrate how it will enhance the character and appearance of the local area applies to development on non-previously developed land. Policy FP1 of the Fishbourne Parish Supplementary Planning Document (SPD), adopted by the Council in 2014, sets out both that new development should respect the character of its surrounding area and wherever possible utilise previously developed land. Consequently the policy pulls both ways as regards the proposals.

The Solent and Southampton Water SPA

14. The mudflats, shingle and saltmarshes within the SPA provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPA. The conservation objectives of the SPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend on them.
15. It is known that increased recreation by the occupiers of new housing around the Solent visiting the coast for leisure has the potential to cause more disturbance to the birds, threatening their survival and thus the achievement of the conservation objectives for the SPA. In addition, Natural England (NE) has advised that nutrients (nitrogen and phosphorus) discharged from sewage treatment works into the Solent is causing eutrophication of the SPA. This has adverse impacts on the bird populations.
16. The proposals would result in an additional dwelling, the future occupiers of which would be likely to use the coast for recreation and generate wastewater. Therefore, in combination with other plans and projects, there would be a likely significant effect on the SPA from additional recreational activity. As regards nutrients, no nutrient budget has been provided to demonstrate that the proposed development would at least be nutrient-neutral. Therefore, taking a precautionary approach, I have to proceed on the basis that the development would lead to an increased nutrient loading.
17. Southern Water has confirmed that wastewater from the postcode PO33 4HE drains to the Sandown Waste Water Treatment Works (WWTW), the treated water from which is not discharged into the SPA. Both the Council and NE advise that where it is certain that this is the case, likely significant effects on

the SPA can be screened out. Consequently, the Council's appropriate assessment (AA) does not address the nutrient issue.

18. To provide this certainty, the Council's approach as set out in its "Position Statement Nitrogen neutral housing development" is to attach a pre-commencement condition requiring the submission and approval of a scheme for the drainage and disposal of surface and foul water from the proposed development. The Council originally suggested a form of wording for such a condition were planning permission to be granted.
19. However, following advice from NE that the suggested condition would not provide sufficient certainty if the proposed development was not to drain to the Sandown WWTW¹, the Council suggested a revised condition during the course of the appeal. The revised condition would require confirmation of the WWTW at which foul water from the proposed development would be treated. If this would not be the Sandown WWTW, the condition would require the submission and agreement of a nutrient budget and any necessary mitigation to prevent harmful impacts on the integrity of the SPA. NE has confirmed that, in its view, the condition would be suitable².
20. A mechanism is necessary to ensure that wastewater from the proposed development would be treated at the Sandown WWTW as indicated or otherwise avoid or mitigate likely wastewater nutrient effects on the designated habitats site to protect its integrity. I have considered whether the Council's original or revised suggested condition or an alternative form of condition could provide the necessary certainty and meet the six tests for conditions in paragraph 56 of the Framework.
21. Notwithstanding NE's agreement to the Council's suggested revised condition I am not confident that a condition requiring wastewater to be discharged to the Sandown WWTW would be enforceable or reasonable as the discharge of wastewater would be outside the control of the appellants once off the appeal site. Such a condition, whether as suggested by the Council or an alternative form of wording, would therefore not meet all the tests in paragraph 56 of the Framework.
22. I have no planning obligation or other mechanism before me to secure discharge to the Sandown WWTW nor any details of any on-site or off-site measures to achieve nutrient neutrality for the lifetime of the proposed development. I am therefore unable to screen out likely significant effects on the integrity of the SPA arising from nutrients associated with the proposed dwelling in combination with other plans and projects.
23. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require a decision maker to undertake an AA where there are likely significant effects on the integrity of a designated habitats site from a proposal, either alone or in combination with other plans and projects. In undertaking the AA I can have regard to potential avoidance and mitigation measures but, as the competent authority, I must be certain that any such measures would be effective and could be secured before I could grant planning permission.

¹ Email dated 30 September 2021

² Email dated 5 October 2021

24. The Solent Recreation Mitigation Strategy (2017) (SRMS) sets out measures for the mitigation of recreational activity including a team of rangers to help coastal communities and visitors understand the importance of the different bird species and the impact of disturbance. As this package of measures is endorsed by NE, I am satisfied that they would provide adequate mitigation for the likely significant recreational effect of the proposals on the integrity of the SPA.
25. Both the appellants' original UU and subsequent additional UU contain obligations for the payment of a contribution to the SRMS. The UUs meet the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and of paragraph 57 of the Framework. I am satisfied therefore that these UUs secure adequate mitigation for the recreational effect of the proposals on the SPA.
26. However, for nutrients, I have no details before me of any necessary mitigation as required by the Council's suggested condition should wastewater from the proposed dwelling not drain to the Sandown WWTW. The suggested condition would thus be imprecise and so would also fail to meet the tests for conditions in paragraph 56 of the Framework in this respect. No other measures for the avoidance or mitigation of likely significant effects, in combination with other plans and projects, on the integrity of the SPA arising from nutrients associated with the proposed dwelling have been put to me. Consequently, I cannot be certain beyond all reasonable scientific doubt that avoidance or mitigation is possible and would be effective for the lifetime of the development.
27. I therefore conclude that whilst the appellants' UUs would ensure adequate mitigation for the recreational impacts associated with the proposed dwelling, I am unable to be certain that the proposal would not have an adverse impact on the integrity of the SPA through the discharge of additional nutrients from wastewater. Accordingly, in this respect, the proposals would not comply with Policy DM12 of the Island Plan which, amongst other things, expects development proposals to protect the integrity of international biodiversity designations. Nor would they comply with the Habitats Regulations or the policies of the Framework on biodiversity, including paragraph 180 a).

Other Matters

Affordable housing

28. Policy DM4 of the Island Plan sets out that development proposals will be expected to provide financial contributions towards affordable housing for developments of 1-9 units in rural areas. The Council's Affordable Housing Supplementary Planning Document 2017 sets out the justification for such a contribution, identifying the high overall housing requirement per annum from households requiring some form of affordable housing and the acute housing affordability issue on the Island. It also sets out the formula for calculating the level of contribution based on a percentage of the value of a development above a threshold value and the mechanism for collecting contributions through planning obligations. The appellants' original UU contains an obligation for the payment of a contribution towards the provision of affordable housing.
29. However, the approach of Policy DM4 is not consistent with the Framework which sets out that such contributions should not be sought for residential developments that are not major developments (10 houses or more). The

Council has not provided any evidence other than the SPD to justify its requirement nor to demonstrate how the contributions are delivering affordable housing on the Island.

30. Therefore, notwithstanding the appellants' willingness to pay the contribution, on the basis of the evidence before me, I consider that the approach to affordable housing provision set out in the Framework is a material consideration that outweighs the requirements of the development plan in this case. I am not satisfied that the obligation would meet the tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) and paragraph 57 of the Framework in respect of this contribution. I have therefore not taken the obligation relating to affordable housing into account in my decision.

Other considerations

31. The proposals would represent a contribution to the housing supply on the Island. The Framework recognises that small sites can make an important contribution to meeting the housing requirement for an area. It is common ground that the site is not isolated in terms of paragraph 80 of the Framework. The site is previously developed land and the proposals would result in limited economic benefits and on-site biodiversity enhancements. The proposed dwelling would be accessible by wheelchair. I note the support for the proposed development from an interested party and Fishbourne Parish Council's support for the design and ecological proposals. These factors lend limited support to the scheme.
32. The Council has not identified any conflict between the proposals and Policies SP5, SP7, DM1, DM3, DM5, DM17 or DM21 of the Island Plan to which the appellants refer. I see no reason to find otherwise but compliance with planning policy is not a benefit of the proposals and therefore carries neutral weight in my determination.
33. The appellants have drawn my attention to other appeals for sites on the Island which were allowed³. However, the effect of additional nutrient loading on the integrity of the Solent and Southampton Water SPA was not identified as an issue in any of these appeals. Therefore the context for these decisions was sufficiently different to that before me to allow a distinction to be drawn between them and this appeal.

Planning Balance

34. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. The latest figure available to me is from April 2018, when the supply was 83.15% of that necessary to demonstrate a 5-year supply. Furthermore, the 2020 Housing Delivery Test measurement of 54% shows that the delivery of housing on the Island is substantially below its housing requirement.
35. Paragraph 11 d) of the Framework is therefore engaged and Policies SP1, SP2, DM2 and DM12 of the Island Plan are deemed to be out of date. Nevertheless, the requirements of Policies DM2 and DM12 in respect of the character / landscape of the area and the integrity of international biodiversity designations are broadly consistent with the Framework. Therefore, in

³ APP/P2114/W/19/3237263, APP/P2114/W/19/3237165, APP/P2114/W/19/3235033, APP/P2114/W/19/3243709

accordance with paragraph 219 of the Framework, the conflict with these policies attracts significant weight.

36. Paragraph 11 d) i) sets out that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 confirms that these policies include those relating to habitats sites.
37. I have found above that the proposals would be likely to adversely affect the integrity of the Solent and Southampton Water SPA. This harm provides a clear reason for refusing the proposed development. Given this conclusion, there is no need for me to apply paragraph 11 d) ii) and consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

Conclusion

38. I have found that the proposals would conflict with the policies of the development plan taken as a whole. There are no considerations, including the policies of the Framework taken as a whole, that indicate that a decision should be made other than in accordance with the development plan.
39. For this reason, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

Martin Small

INSPECTOR